



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,692	10/03/2000	Lee Codel Lawson Tarbotton	NA11P160/00.110.01	6816

28875 7590 04/21/2004

SILICON VALLEY INTELLECTUAL PROPERTY GROUP
P.O. BOX 721120
SAN JOSE, CA 95172-1120

EXAMINER

BURGESS, BARBARA N

ART UNIT	PAPER NUMBER
----------	--------------

2157

10

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/678,692

Applicant(s)

TARBOTTON ET AL.

Examiner

Barbara N Burgess

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Request for Reconsideration filed on February 5, 2004. Claims 1-63 are presented for further examination.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-63 rejected under 35 U.S.C. 102(e) as being anticipated by Gampper et al (hereinafter, "Gampper", 6,003,082).

As per claims 1, 16, 19, 22, 37, 40, 43, 58, 61, Gampper discloses a method of distributing a computer file from a source computer to a plurality of target computers via a computer network, said method comprising the steps of:

- Determining a demand level upon said source computer for downloading of said computer file to said plurality of target computers (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65);

Art Unit: 2157

- Sending at least one download controlling message from said source computer to at least one of said plurality of target computers (column 2, lines 58-60, column 10, lines 18-19, 37-40, 50-52);
- Controlling downloading of said computer file by said at least one of said plurality of target computers in dependence upon said download controlling message (column 2, lines 48-55, column 9, lines 30-45, column 10, lines 27-37, 43-48);
- Adjusting said downloading controlling message in dependence upon said demand level (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 2, 17, 20, 23, 38, 41, 44, 59, 62, Gampper discloses wherein said download controlling message includes a broadcast message, said method comprising steps of:

- Issuing said broadcasting message from said source computer to said plurality of target computers indicating availability of said computer file for download from said source computer, said broadcast message including at least one download qualifying parameter (column 10, lines 18-19, 37-40, 50-52);
- Receiving said broadcast message at said plurality of target computer (column 10, lines 18-19, 37-40, 50-52);
- Determining for each target computer of said plurality of target computers that received said broadcast message whether or not said target computer

Art Unit: 2157

already has said computer file (column 9, lines 30-45, column 10, lines 27-37, 43-48);

- Determining for each target computer that does not already have said computer file in dependence upon said at least one download qualifying parameter whether or not said target computer qualifies to download said computer file in response to said broadcast message (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20);
- Downloading said computer file from said source computer to those target computers that do not already have said computer file and that qualify to download said computer file (column 2, lines 46-48, column 9, lines 61-67, column 10, lines 16-19);
- Monitoring how many target computers download said computer file in response to said broadcast message (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20);
- Adjusting at least one download parameter used in a following broadcast message issued by said source computer in dependence upon how many target computers downloaded said computer file in response to said broadcast message (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 3, 24, 45, Grampper discloses wherein said at least one download qualifying parameter is adjusted such that a probability that a particular target computer will qualify to download said computer file on the basis of said at least

Art Unit: 2157

one download qualifying parameter increases as time progresses (column 8, lines 40-41, column 9, lines 32-35, 49-51, column 13, lines 24-26).

As per claims 4, 25, 46, Grampper discloses wherein a number of target computers not having said computer file decreases as time progresses (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 5, 26, 47, Grampper discloses wherein said at least one download qualifying parameter is adjusted such that a number of target computers downloading said computer file in response to said broadcast message does not exceed a threshold level (column 2, lines 39-45, column 8, lines 47-27 column 10, lines 59-63).

As per claims 6, 27, 48, Grampper discloses wherein each target computer has a priority level parameter indicating a position within a priority hierarchy and said at least one download qualifying parameter specifies which priority level parameters a target computer must have to qualify to download said computer file (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65).

As per claims 7, 28, 49, Grampper discloses wherein said at least one download qualifying parameter includes a random selection control parameter used in combination with a quasi-random parameter generated by a particular target

Art Unit: 2157

computers to control whether or not said particular target computer qualifies to download said computer file (column 2, lines 39-45, column 8, lines 47-27 column 10, lines 59-63).

As per claims 8, 29, 50, Grampper discloses wherein said broadcast message includes time range data specifying a range of times within which target computers qualifying to download said computer file in response to said broadcast message should download said computer file (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 9, 30, 51, Grampper discloses wherein each target computer that qualifies to download said target file in response to said broadcast message initiates downloading at a time quasi-randomly selected within said range of time (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

As per claims 10, 31, 52, Grampper discloses wherein said broadcast message includes a network address of said source computer (column 6, lines 26-36).

As per claims 11, 32, 53, Grampper discloses wherein a target computer that has downloaded said computer file subsequently acts as a source computer (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65).

Art Unit: 2157

As per claims 12, 33, 54, Grampper discloses wherein upon receipt of said computer file said target computer issues prompts seeking user input specifying how said computer file should be used (column 6, lines 26-40, column 7, lines 42-50).

As per claims 13, 34, 55, Grampper discloses wherein said computer file is a virus definition data file for use by an ant-virus computer program (column 6, lines 26-40, column 7, lines 42-50).

As per claims 14, 35, 56, Grampper discloses wherein at least portions of said computer network comprises internet networks links (column 1, lines 14-40, column 2, lines 25-35).

As per claims 15, 18, 21, 36, 39, 42, 57, 60, 63, Grampper discloses wherein download controlling message includes a retry message, said method comprising the steps of:

- Sending a download request from one of said plurality of target computers to said source computer, said download request including information identifying said one of said plurality of target computers (column 2, lines 25-27, 37-40, column 3, lines 57-59, column 4, lines 2-11, column 7, lines 14-16, column 8, lines 40-65);

Art Unit: 2157

- Receiving at said source computer said download request from said one of said plurality of target computers (column 2, lines 32-35, column 6, lines 5-10, 37-40, column 9, lines 62-65);
- If said demand level is less than a predetermined threshold level, then sending said computer file from said source computer to said one of said plurality of target computers (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20);
- If said demand level is greater than a predetermined threshold level, then sending said retry message to said one of said plurality of target computers indicating a delay period after which said one of said plurality of target computers may reissue said download request to said source computer (column 2, lines 48-55, column 9, lines 30-45, column 10, lines 27-37, 43-48);
- Upon expiry of said delay period reissuing said download request from said one of said plurality of target computers to said source computer (column 10, lines 18-19, 37-40, 50-52, column 13, lines 14-20).

Response to Arguments

The Office notes the following arguments:

- (a) There is clearly no disclosure teaching or suggesting any sort of “demand level” let alone “determining a demand level upon said source computer”.
- (b) There is no disclosure, teaching, or suggestion of “controlling downloading...in dependence upon said download controlling message”, and

Art Unit: 2157

"adjusting downloading controlling message in dependence upon said demand level".

In response to:

(a)-(b) Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara N Burgess whose telephone number is (703) 305-3366. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Ettinene can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

December 15, 2003

Barbara N Burgess
Examiner
Art Unit 2157


ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100